



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Joseph R. Santana, Jr., USN (Retired) (Deceased)

File: B-258328

Date: February 15, 1995

DIGEST

Arrearage of retired pay and Survivor Benefit Plan premiums may not be paid to widow of deceased member because evidence of a valid decree of divorce from a former wife does not exist. Decree from court of competent jurisdiction establishing eligible marital status is necessary before payment can be made. Moreover, she is not the beneficiary of SBP because member never filed an election naming her his spouse as required by 10 U.S.C. § 1448(a)(5).

DECISION

This is in response to Mrs. Geneva Santana's appeal of the settlement of our Claims Group which denied her request for the unpaid retired pay and to be named beneficiary of the Survivor Benefit Plan (SBP) annuity of Joseph R. Santana, Jr., USN (Retired) (Deceased).

By settlement dated June 25, 1991, our Claims Group denied these claims. For the reasons which follow, we sustain that settlement.

On an uncertain date, Joseph R. Santana, Jr., married Viola Dolly Winchester Santana, which marriage was annulled on July 23, 1945. They remarried at a later date and then separated, again the dates are unknown. On September 26, 1966, Mr. Santana executed an affidavit in which he consented to Viola's petition for divorce in Tijuana, Baja California Norte, Mexico. The final disposition of any petition for divorce she may have filed is unknown because the records cannot be located by the Mexican authorities. Viola subsequently remarried another individual and was divorced in California in 1983.

Mr. Santana retired on March 22, 1982, at age 60 and was automatically enrolled in the SBP with coverage for spouse only. Mr. Santana married Geneva on June 26, 1983, but never advised the Navy of the marriage. Mr. Santana died on August 16, 1989.

It is clear from the record that Geneva cannot be the annuitant of Mr. Santana's SBP. At the time of his enrollment, he was unmarried and did not name a spouse as beneficiary.

Under 10 U.S.C. § 1448(a)(5) he was therefore required to file an election with the Secretary within 1 year of the date of marriage naming the new spouse.

Regarding his arrears of retired pay and the SBP premiums which were withheld from his retired pay, we find that Geneva cannot now receive these given her doubtful status as his lawful widow.

As a general rule, we have held that where the validity of a subsequent marriage is dependent upon dissolution of the prior marriage by a divorce decree of a Mexican court and such divorce has not been recognized by a court of competent jurisdiction of the United States, the marital status of the parties is considered to be of too doubtful legality for this Office to approve payment of any funds predicated on such marital relationship. 55 Comp. Gen. 533 (1975).

Here, there exists no proof that the Mexican divorce was ever obtained much less the validity of such a divorce decree if one was issued. Accordingly, there is substantial doubt as to the marital status of the claimant and the member at the time of his death. Therefore, it must be concluded that in the absence of a declaratory decree from a court of competent jurisdiction of the United States establishing the marital status, Geneva Santana may not be recognized as the deceased member's widow or surviving spouse for the purpose of entitlement to his unpaid retired pay and the refund of the SBP premiums which were collected.

We sustain the settlement of the Claims Group.

\s\ Seymour Efros
for Robert P. Murphy
General Counsel